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July 22, 2002

SENT BY FEDERAL EXPRESS

Marlene H. Dortch, Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Reply Comments of Northern Paul Bunyan Radio
Company (RM-10418) in MB Docket No. 02-108,
FM Table of Allocations, Harrisville, MI.

Dear Ms. Dortch:

Transmitted herewith is an original and four copies of
the above captioned pleading.

It is requested that the additional copy marked "FILE"
be date-stamped and returned to us in the enclosed self-
addressed stamped envelope.

Should any additional information be required, please
contact this office.

Very truly yours,

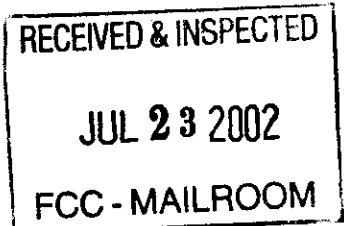

Robert J. Buenzle, Counsel

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.



In the Matter of)	MB Docket No. 02-108
)	
Amendment of Section 73.202(b))	RM-10418
Table of Allotments)	
FM Broadcast Stations)	
Harrisville, Michigan)	

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

REPLY COMMENTS

On February 6, 2002, Northern Paul Bunyan Radio Company (hereinafter "NPB"), filed a Petition for Rulemaking requesting allotment of FM Channel 226A as a first local commercial service to Harrisville, Michigan, which was subsequently published in a Notice of Proposed Rulemaking ("Notice") which was released on May 17, 2002. In response to that Notice, Comments in support of the request were filed by NPB and a Counterproposal was also filed by Northern Michigan Radio, Inc., licensee of radio station WBYC-FM, ("WBYC") currently licensed to Atlanta, Michigan. For the reasons set forth below, NPB submits that the WBYC Counterproposal is technically deficient and not substantially complete as filed and that it should therefore be dismissed and the original proposal of NPB adopted.

The NPB proposal requested a new FM channel to be allocated to Harrisville (226A) and at the same time separate requests were also filed requesting new channels for Presque Isle (227A) in

Docket 02-106, and for Alpena (289A) in Docket 02-107 (all in Michigan). In its counterproposal, WBYC suggested a number of allocations, including alternate channels for Presque Isle (279A in place of 227A) and Harrisville (232A in place of 226A).^{1/} At the same time, it proposed new allocations in Ossineke, and East Tawas and, most importantly, the deletion of its currently operating station WBYC on channel 223C1 and removal of that channel allocation to a new operation of WBYC on that channel in Vanderbilt.

Whatever the motivations of WBYC may be, or the merits of its own decision to abandon Atlanta, concluding that its station would better serve the new community of Vanderbilt as opposed to its existing community of Atlanta, it seems clear that the entire WBYC proposal has no place to be considered as a counterproposal in this docket and should, in fact be filed elsewhere in its own Petition for Rulemaking and considered there. To the extent it has been filed here, it includes a fatal defect that precludes its further consideration in this docket, as will be further discussed below.

**The WBYC Counterproposal is Fatally Flawed And
Should Receive No Further Consideration In this Docket.**

NPB submits that the WBYC Counterproposal, as filed, includes a fatal omission without which it could not possibly be considered and approved in this Docket. Specifically, WBYC has

^{1/} WBYC did not suggest any change in the allocation for Alpena as proposed in 02-107 and no further mention of that proposal is required here.

rather cavalierly proposed to take the only operating station out of the city of Atlanta so that it could be then moved and relicensed to the city of Vanderbilt. Aside from the gain/loss analyses that would be required to positively support such a proposal to benefit Vanderbilt, the damaging effect of taking Atlanta's sole operating station from it must perforce be given very serious consideration. Furthermore WBYC's proposal to also place a "replacement" (lower class) channel 223C1 into Atlanta with no further interest or commitment whatsoever expressed by WBYC to apply for or build a station on that channel provides legally insufficient grounds upon which the Commission could adopt that proposal.

As a starting point, there is the Commission's very clear pronouncement on that matter in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990) where it said the following:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another..., replacement of an operating station with a vacant allotment..., although a factor to be considered in favor of a proposal, does not adequately cure the disruption to "existing service" occasioned by removal of an operating station.

Recognizing the clear terms of its above-quoted policy statement, the Commission has been most vigilant in acting to protect communities that are faced with not just a loss of service but the most egregious case of a proposed loss of its one

and only existing local transmission service. To balance the conflicting factors however, the Commission has, on occasion, allowed the relocation of such a sole existing service with the required proviso and commitment by the proponent to not only replace the channel at the same time but to also submit its own commitment to apply for and build a station on the new channel in the vacated community as soon or sooner than initiating service on the relocated channel in the new community. See for example Albion and Columbus, Nebraska, 8 FCC Rcd 2876 (1993) where the pledge was made and the Commission granted the request saying at paragraph 10: "Were it not for this pledge, we would not consider granting this proposal (emphasis supplied). See also Llano and Marble Falls, 12 FCC Rcd 6809 (1998) where the identical language was included at paragraph 7 in granting that proposal.

In sum, we submit it is crystal clear that the policy of the Commission is to not grant a proposed change in community which takes the only operating station out of the existing community, absent provision of a new replacement channel and a clear and unqualified commitment by the proponent to apply for and build a station on that replacement channel on or before initiating service on the relocated channel. As stated by the Commission in both Albion and Llano, absent such a commitment, it would not even consider granting the proposal. It is therefore obvious that inclusion of such a firm commitment in a community change proposal such as WBYC's is a required element of that request and absent such a required element, the request is not "substantially complete" and cannot be considered or approved.

In the face of this, WBYC submitted nothing. While carefully noting its interest in each of the other proposals added in its counterproposal (see Counterproposal, page 7), it treated the needs and interests of the community of Atlanta like yesterday's news, not one word about Atlanta, no consideration whatsoever to what happens there when their only station is shut down and moved away. All that WBYC did was to request allocation of a lower class replacement channel in Atlanta and that was it. They showed no interest in filing to build a station on that new channel in Atlanta and apparently could care less if anyone else did either, leaving the community of Atlanta with nothing, and no prospects for anything more than that.

**The Counterproposal Was Not "Substantially Complete"
As Filed And Must be Rejected on That Basis.**

It is unclear why WBYC chose to submit its allocation plan as a counterproposal in this proceeding rather than simply filing its own Rulemaking Petition. Having done so however, WBYC must be held to the well-established rule here that any such counterproposal must be "technically correct and substantially complete" at the time it is filed, Cloverdale et al, 12 FCC Rcd 2090 (1997) at pa 6, citing Fort Bragg, California, 6 FCC Rcd 5817 (1991). See also Broken Arrow et al, 3 FCC Rcd 6507 and Susquehanna et al, 15 FCC Rcd 24160 (2000). It is clear that the WBYC counterproposal could not possibly be considered or granted as filed since to do so would delete the only existing operating radio service from Atlanta with no prospect or commitment by

anyone to replacing that service, all contrary to long established Commission policy as discussed above.

Moreover, to further complicate matters, the defective WBYC proposal is also, by WBYC's own admission (see footnote 3 of its Engineering Statement), short-spaced, in conflict, and mutually exclusive with yet another pending rulemaking proposal to add channel 281A at Ossineke. To the extent that this would introduce even more complications to the heretofore simple request by NPB for a new channel in Harrisville, it would further prejudice NPB's efforts to add that channel without needless delay so that the new service could be introduced at the earliest possible time for that community.

Having not addressed the loss of service proposed by WBYC in Atlanta, and this being a contested rulemaking proceeding, WBYC's counterproposal must stand as filed and it is therefore questionable whether in its defective condition it could be considered or acted upon at all in the present proceeding, including the alternate channels as proposed for Presque Isle and Harrisville.

Conclusion

Wherefore, NPB restates here its own continuing preference for the allocation of channel 226A at Harrisville and requests that its Petition for allocation of that channel be adopted and the WBYC Counterproposal be rejected as defective.

Respectfully Submitted,

NORTHERN PAUL BUNYAN RADIO COMPANY

by 

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July 23, 2002

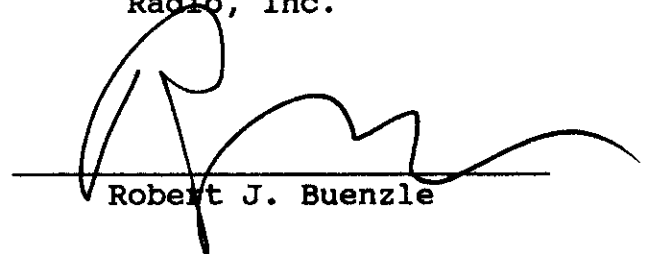
CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 23rd day of July, 2002, upon the following:

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